

CHAPTER NO. 972

HOUSE BILL NO. 2319

By Representative Kisber

Substituted for: Senate Bill No. 2382

By Senator Clabough

AN ACT to amend Tennessee Code Annotated, Title 50, Chapter 6 and Title 56, relative to employers that fail to carry Workers' Compensation insurance.

WHEREAS, in Section 2 of Public Chapter 217 of the Acts of 1999 the General Assembly directed the Special Joint Committee of the General Assembly on Workers' Compensation to "review issues and provide recommendations relating to covered employers' failure to comply with the insurance provisions of the workers' compensation law and the need to ensure the timely provision of workers' compensation benefits to workers injured during periods of employer noncompliance"; and

WHEREAS, the Committee and the Advisory Council on Workers' Compensation have conducted this study and have issued recommendations to the General Assembly on this matter; and

WHEREAS, the Committee introduces this legislation to enact these recommendations; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 6, is amended by adding Section 2 as a new part to be appropriately designated.

SECTION 2. There is hereby created the uninsured employers fund as an account in the general fund which shall be invested pursuant to Tennessee Code Annotated, Section 9-4-603. Moneys from the fund may be expended to fund activities authorized by this act. Any revenues deposited in this fund shall remain in the fund until expended for purposes consistent with this part, and shall not revert to the general fund on any June 30. Any appropriation for such fund shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years.

(b) The uninsured employers fund may receive revenues that shall include all penalties assessed and collected from employers who fail to provide workers' compensation coverage or who fail to qualify as a self-insurer pursuant to the workers' compensation law and any other amounts which may be appropriated.

(c) The uninsured employers fund shall be used for payment of the costs incurred by the Department of Labor and Workforce Development to administer the assessment of and collection of penalties provided in Tennessee Code Annotated, Section 50-6-412.

SECTION 3. Tennessee Code Annotated, Section 50-6-118 is amended by deleting subsection (b) in its entirety and by substituting instead the following language:

(b) All penalties collected by the department from an employer for failure to provide workers' compensation coverage or failure to qualify as a self-insurer

shall be paid into and become a part of the uninsured employers fund. All other penalties collected by the department shall be paid into and become a part of the second injury fund.

SECTION 4. Tennessee Code Annotated, Section 50-6-412 is amended by deleting the section in its entirety and by substituting instead the following language.

(a) The Commissioner of the Department of Labor and Workforce Development or the commissioner's designee shall have the authority to issue a subpoena to require an employer doing business in the State of Tennessee to produce any and all books, documents or other tangible things which may be relevant to or reasonably calculated to lead to the discovery of relevant information necessary to determine whether an employer is subject to the workers' compensation law, to determine whether an employer has secured payment of compensation pursuant to the worker's compensation law, and/or to determine the amount of any monetary penalty which is required to be assessed against an employer for failure to secure payment of compensation pursuant to the workers' compensation law.

(b)(1) All monetary penalties assessed pursuant to this section which are based on the average yearly workers' compensation premium shall be calculated by utilizing the appropriate assigned risk plan advisory prospective loss cost and multiplier for such an employer as of the date of determination that the employer is subject to the workers' compensation law and has not secured payment of compensation pursuant to the workers' compensation law.

(b)(2) If the commissioner or commissioner's designee determines the period of noncompliance with the workers' compensation law is less than one (1) year, any assessed monetary penalty shall be prorated; however, the monetary penalty shall not be less than an amount equal to one (1) month's premium of the average yearly workers' compensation premium for such an employer based on the appropriate assigned risk plan advisory prospective loss cost and multiplier.

(b)(3) If any monetary penalty assessed against an employer is held in abeyance pursuant to this section, the period of abeyance shall be two (2) years. Any abated penalty becomes void upon the expiration of the two (2) year period, provided the employer remained subject to the workers' compensation law during the two (2) year period and continuously secured payment of compensation as required by law. Any abated penalty becomes voidable, if within the two (2) year period, the employer provides notice to the commissioner that the employer is no longer subject to the workers' compensation law and upon concurrence of the commissioner that the employer is no longer subject to the workers' compensation law, the penalty shall become void. Any abated penalty shall become due and payable immediately if, within the two (2) year period, the employer continues to be subject to the workers' compensation law and fails to secure payment of compensation as required by law.

(b)(4) The commissioner shall advise an employer of the amount of any assessed monetary penalty in writing and shall include the date on which the monetary penalty shall be due and payable.

(c)(1) When the records of the Department of Labor and Workforce Development indicate, or when the department's investigation of an employer indicates, that an employer is subject to the workers' compensation law and has failed to secure payment of compensation as required by the workers'

compensation law, the department shall so notify the employer by certified letter, return receipt requested.

(c)(2) The department shall require the employer to provide, within ten (10) days, excluding Saturdays, Sundays and holidays, of the receipt of the certified letter, either proof that the employer had secured payment of compensation as required by the workers' compensation law or a verifiable sworn affidavit, with supporting documentation, that the employer is exempt from the workers' compensation law.

(c)(3) The certified letter shall also advise the employer of the monetary penalties which may be assessed against the employer if it is determined by the commissioner or commissioner's designee that the employer has failed to secure payment of compensation as required by the worker's compensation law and shall advise the employer of the criminal penalties to which the employer may be subject for such failure.

(d)(1) If the employer responds to the certified letter within ten (10) days, excluding Saturdays, Sundays, and holidays, of its receipt and it is determined by the commissioner or commissioner's designee that the employer has secured payment of compensation as required by the workers' compensation law or that the employer is not subject to the workers' compensation law, no monetary penalty shall be assessed.

(d)(2) If the employer responds to the certified letter within ten (10) days, excluding Saturdays, Sundays, and holidays, of its receipt and it is determined by the commissioner or commissioner's designee that the employer is subject to the workers' compensation law and that the employer has secured the payment of compensation since the date of receipt of the certified letter, the commissioner shall issue a monetary penalty to the employer equal to one and one-half (1 1/2) times the average yearly workers' compensation premium.

(e)(1) If the employer fails to respond to the certified letter within ten (10) days, excluding Saturdays, Sundays, and holidays, of its receipt or the employer responds to the certified letter but does not provide a verifiable sworn affidavit of exemption, the commissioner or commissioner's designee shall issue a "Show Cause Order and Notice of Hearing" which shall be sent to the employer by certified mail, return receipt requested, to the employer's last known address, according to department records. If either of these circumstances occur, the commissioner shall assess two (2) penalties. The first monetary penalty shall be equal to one and one half (1 1/2) times the average yearly workers' compensation premium. The second monetary penalty shall be equal to the average yearly workers' compensation premium for such employer.

(e)(2) The "Show Cause Order and Notice of Hearing" shall notify the employer of all monetary penalties which have been assessed against the employer and the criminal penalties to which the employer may be subject.

(e)(3) The "Show Cause Order and Notice of Hearing" shall advise the employer it must appear at the show cause hearing before the commissioner or commissioner's designee to show cause why it should not be held to be in violation of the workers' compensation law by its failure to secure compensation as required by the workers' compensation law.

(e)(4) The employer shall have the burden of proof at the show cause hearing and shall be required to produce documentary evidence that the

employer is not subject to the workers' compensation law or that the employer was in compliance with the workers' compensation law.

(e)(5) The department shall schedule the show cause hearing in a timely manner, not to exceed sixty (60) days from the date of the employer's receipt of the first certified letter sent pursuant to subsection (c)(1).

(f)(1) If the commissioner or commissioner's designee determines at the show cause hearing that the employer is not subject to the workers' compensation law or that the employer had secured and continues to secure payment of compensation as required by the workers' compensation law, all monetary penalties shall be void.

(f)(2) If the employer appears at the show cause hearing and it is determined by the commissioner or commissioner's designee that the employer is subject to the workers' compensation law and that the employer has come into compliance with the workers' compensation law by securing payment of compensation prior to the date of the show cause hearing, the first monetary penalty equal to one and one half (1 1/2) times the average yearly workers' compensation premium shall be due; however, the second monetary penalty equal to the average yearly workers' compensation premium shall be held in abeyance.

(f)(3) If the employer appears at the show cause hearing and it is determined by the commissioner or commissioner's designee that the employer is subject to the workers' compensation law and that the employer has failed to secure payment of compensation as required by the workers' compensation law, the employer shall be ordered to procure workers' compensation insurance coverage and to provide the department with proof of coverage within five (5) days of the issuance of the order, excluding Saturdays, Sundays and holidays. If the employer obtains workers' compensation insurance coverage and provides the department with proof of coverage as ordered, the first monetary penalty equal to one and one-half (1 1/2) times the average yearly workers' compensation premium shall be due; however, the second monetary penalty equal to the average yearly workers' compensation premium shall be held in abeyance.

(f)(4) If the employer fails to obtain workers' compensation insurance coverage as ordered by the commissioner or commissioner's designee within the required time period, all monetary penalties, totaling two and one-half (2 1/2) times the average yearly workers' compensation premium, shall be immediately due and payable.

(g)(1) The commissioner shall have the authority to seek an injunction in the Chancery Court of Davidson County, Tennessee, to prohibit an employer from operating its business in any way until the employer has complied with an order by the commissioner or commissioner's designee to obtain workers' compensation insurance coverage.

(g)(2) In the event and employer shall fail to comply with the requirements of the workers' compensation law by failing to secure payment of compensation on a second or subsequent occasion, the commissioner shall have the authority to seek an injunction in the Chancery Court of Davidson County Tennessee to prohibit the employer from operating its business in any way until the employer provides proof that it has complied with the workers' compensation law by securing payment of compensation.

(h) The employer shall have the right to appeal, pursuant to the Tennessee Administrative Procedures Act, any decision made by or order issued by the commissioner or commissioner's designee pursuant to this section.


SECTION 5. Section 3 of this act shall take effect July 1, 2000, the public welfare requiring it. All other sections of this act shall take effect January 1, 2001, the public welfare requiring it.

PASSED: June 12, 2000


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 23rd day of June 2000


DON SUNDQUIST, GOVERNOR